

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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DONOVAN JOSEPH,

Plaintiff,

v.

DW NEVEN, et al.,

Defendants.

Case No. 2:15-cv-02071-GMN-VCF

ORDER

Petitioner Donovan Joseph has filed a form petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) and paid the filing fee. The court has reviewed the petition pursuant to Habeas Rule 4 and finds that it must be dismissed for failure to state a claim cognizable in federal habeas corpus.

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). “[T]he essence of habeas corpus is an attack by a person in custody on the legality of that custody, and the traditional function of the writ is to secure release from illegal custody. *Preiser v Rodriguez*, 411 U.S. 475, 484 (1973). “[H]abeas corpus is not an appropriate or available federal remedy” when a petitioner is not “challeng[ing] the very fact or duration of confinement itself” or unconstitutional restraints that render the petitioner’s otherwise lawful custody, unlawful. *Id.* at 494, 499.

Here, Joseph seeks to challenge the Nevada Supreme Court’s denial of his motion to withdraw counsel that represented or currently represents him on direct

appeal (ECF No. 1, pp. 3-4). This is not a challenge to Joseph's conviction or sentence. Accordingly, this petition is dismissed for failure to state a claim cognizable in federal habeas corpus. The court will not issue a certificate of appealability, as reasonable jurists would not debate the dismissal of this petition.

**IT IS THEREFORE ORDERED** that the petition (ECF No. 1) is **DISMISSED** for failure to state a claim cognizable in federal habeas corpus.

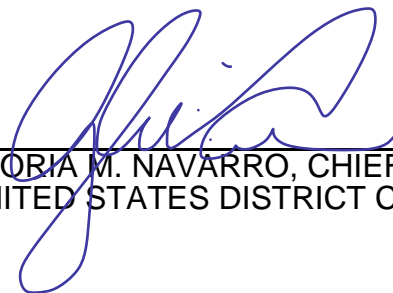
**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

**IT IS FURTHER ORDERED** that the application for leave to proceed *in forma pauperis* (ECF No. 2) is **DENIED** as moot because petitioner paid the filing fee.

**IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel (ECF No. 3) is **DENIED** as moot.

**IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly and close this case.

DATED: 18 December 2015.



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GLORIA M. NAVARRO, CHIEF JUDGE  
UNITED STATES DISTRICT COURT